

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.1472 of 2019
and
Civil Miscellaneous Appeal No.714 of 2019

COMMON JUDGMENT:

Since the facts of the case, parties to the litigation and issues involved are identical and since both these cases arise out of the common order passed by the Court below, both these matters are being disposed of by this common judgment.

2. C.R.P.No.1472 of 2019 is filed by the petitioners/defendants Nos.2, 3, 9 & 11, under Section 115 of C.P.C., challenging the order, dated 16.03.2019, passed in I.A.No.1071 of 2018 in O.S.No.273 of 2005, by the II Additional District Judge, Ranga Reddy District at L.B.Nagar, whereby, the petition filed by the revision petitioners/defendants 2, 3, 9 & 11 under Section 5 of the Limitation Act, 1963, to condone the delay of 2516 days in filing the petition under Order IX Rule 13 of C.P.C. to set aside the *ex parte* decree, dated 05.03.2011, was dismissed.

3. C.M.A.No.714 of 2019 is filed by the appellants/defendant Nos.2 & 3, under Order XLIII Rule 1 of C.P.C., challenging the order, dated 16.03.2019, passed in I.A.No.1072 of 2018 in O.S.No.273 of 2005, by the II Additional District Judge, Ranga Reddy District at L.B.Nagar, whereby, the petition filed by the appellants/defendant Nos.2

& 3, along with defendants 9 and 11, under Order IX Rule 13 of C.P.C. to set aside the *ex parte* preliminary decree, dated 05.03.2011, was dismissed.

4. Heard the learned counsel for both the sides and perused the record.

5. Since the relief claimed in C.M.A.No.714 of 2019 is consequential to the relief claimed in C.R.P.No.1472 of 2019, it is appropriate to decide C.R.P.No.1472 of 2019 at the first instance.

6. The learned counsel for the revision petitioners/defendants 2, 3, 9 & 11 in C.R.P.No.1472 of 2019 would contend that defendant No.1 was suffering from jaundice. Therefore, written statement was not filed in the subject suit and the matter was not proceeded with. Though there are genuine reasons to condone the delay in filing the petition to set aside the *ex parte* decree, dated 05.03.2011, the Court below dismissed I.A.No.1071 of 2018, which is erroneous, and ultimately prayed to set aside the order passed in I.A.No.1071 of 2018 by the Court below and consequently set aside the order passed in I.A.No.1072 of 2018 and allow both the C.R.P. and C.M.A. as prayed for.

7. On the other hand, the learned counsel for the respondent No.1/plaintiff would contend that the delay is abnormal. There is no justifiable cause to condone the delay. The Court below rightly dismissed both the interlocutory

applications, assigning reasons. There is nothing to take a different view and ultimately prayed to dismiss both the cases.

8. In view of the submissions of both the sides, the point that arises for determination in both these C.R.P. and C.M.A. is as follows:

“Whether the common order, dated 16.03.2019, passed in I.A.Nos.1071 and 1072 of 2018 in O.S.No.273 of 2005, by the II Additional District Judge, Ranga Reddy District at L.B.Nagar, is liable to be set aside?”

9. As seen from the material placed on record, defendant No.1 was said to be suffering from Jaundice and hence, he could not file his written statement in the subject suit. However, no oral or documentary evidence has been adduced to substantiate the same. The Court below, having given ample opportunity to the revision petitioners/defendants 2, 3, 9 & 11, was pleased to set them *ex parte* and passed *ex parte* decree, dated 05.03.2011. Even the revision petitioners/defendant Nos.2, 3, 9 & 11, being the agnates of the other parties, did not choose to defeat the claim of the respondent No.1/plaintiff in a suit for partition and separate possession, for considerable period. In spite of affording several opportunities, the revision petitioners/defendant Nos.2, 3, 9 & 11 failed to proceed with the suit and ultimately, they were set *ex parte* and an *ex parte* preliminary decree for partition was passed against them. Even in the final decree

proceedings also, notices were sent to them, but they failed to attend the final decree proceedings. No justifiable cause was shown by them in remaining absent in the proceedings of the subject suit. Furthermore, as rightly contended by the learned counsel for the respondent No.1/plaintiff, no medical evidence was filed to support the contention that defendant No.1 was suffering from Jaundice. There is no single document to substantiate the submissions made on behalf of the revision petitioners/defendant Nos.2, 3, 9 & 11. The Court below, having considered all the contentions raised by both sides, was pleased to dismiss both the subject interlocutory applications. The Court below is justified in passing the impugned common order. There is nothing to take a different view. C.R.P.No.1472 of 2019 is devoid of merit and is liable to be dismissed.

10. Accordingly, C.R.P.No.1472 of 2019 is dismissed. In view of the orders passed in C.R.P.No.1472 of 2019, C.M.A.No.714 of 2019 stands dismissed.

Miscellaneous petitions, if any, pending in both these matters, shall stand closed. There shall be no order as to costs.

19th November, 2019
Bvv

Dr. SHAMEEM AKTHER, J